

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

**JOHNNY L. McGOWAN, JR. v. HOWARD CARLTON, WARDEN**

**Appeal from the Criminal Court for Morgan County  
No. 9192 E. Eugene Eblen, Judge**

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**No. E2007-00636-CCA-R3-HC - Filed October 20, 2009**

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The pro se Petitioner, Johnny L. McGowan, Jr., appeals from the trial court's order denying his petition for the writ of habeas corpus. The State has filed a motion requesting that this court affirm the order pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petition fails to state a cognizable claim for habeas corpus relief. The State's motion is granted, and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed  
Pursuant to Rule 20, Tenn. Ct. Crim. App. R.**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Johnny L. McGowan, Jr., Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and John H. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

**MEMORANDUM OPINION**

According to the judgment attached to the petition, the Petitioner was convicted on September 23, 2005, on his guilty plea of aggravated assault in Davidson County case 2003-C-2205. He was sentenced to serve eight years as a Range III, persistent offender, consecutive to an effective twenty-year sentence he was serving for Rutherford County convictions. The records of this court reflect that since that time, the Petitioner has engaged in extensive litigation attacking his convictions in the present and other cases.

In the present case, the Petitioner alleges that the judgment against him is void because he was sentenced pursuant to the plea agreement as a Range III offender, despite the fact that he had sufficient prior convictions to qualify as a career offender. The petition sought to have the judgment set aside. The trial court dismissed the petition without stating the basis upon which it did so.

In Tennessee, the grounds upon which habeas corpus relief may be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The writ will issue only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 222 Tenn. 50, 432 S.W.2d 656 (1968); State ex rel. Wade v. Norvell, 1 Tenn. Crim. App. 447, 443 S.W.2d 839 (1969). The purpose of the habeas corpus petition is to contest a void, not merely a voidable, judgment. State ex rel Newsome v. Henderson, 424 S.W.2d 186, 189 (1969). A void, as opposed to a voidable, judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment.” See Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. See Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). A court may summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petition does not state a cognizable claim. See Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004).

The Petitioner’s conviction is not void based upon illegality of the sentence. Our supreme court has held that a plea bargain may include a sentence that is outside the offender’s range classification as long as it remains within the overall punishment range for the conviction offense. See Hoover v. State, 215 S.W.3d 776, 779 (Tenn. 2007); State v. Mahler, 735 S.W.2d 226, 228 (Tenn. 1997). The Petitioner’s sentence is within the overall punishment range for the offense of which he was convicted. He is not entitled to relief. The trial court did not err in dismissing the petition.

Upon consideration of the pleadings, the record, and the applicable law, the court concludes that the Petitioner has not established that he is entitled to habeas corpus relief. Accordingly, the State’s motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

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JOSEPH M. TIPTON, PRESIDING JUDGE